

DEKALB GRAND JURY PRESENTMENTS

September – October Term

2003



Georgia State Senate

EMANUEL JONES

Senator, District 10

302-B Legislative Office Building
18 Capitol Square, S.W.
Atlanta, Georgia 30334
Tel: (404) 656-0502
Fax: (404) 657-3217

P.O. Box 370244
Decatur, Georgia 30037
Tel: (770) 964-8888
Fax: (770) 964-7162

www.emanueljones.com

E-mail: emanj@mindspring.com

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DEKALB GRAND JURY PRESENTMENTS

September-October Term, 2003

I. SUMMARY OF TERM

A. Indictments

This Grand Jury was presented with ___ cases during the September-October term. Of these cases, ___ True Bills and ___ No Bills were returned.

B. Field Trips

Members of the Grand Jury toured the DeKalb County Medical Examiners Office. We elected not to visit the DeKalb County Jail, or to participate in "ride-alongs" with the DeKalb Police.

The Medical Examiner's Office tour was very impressive. The commitment of the staff there to comforting grieving relatives and providing as pleasant an environment as possible for them should be lauded.

C. Board of Equalization

Earnestine Leach, Board of Equalization Coordinator, submitted a slate of appointees for the 2004-2006 term for the Boards of Equalization. The names were approved as submitted.

D. Special Investigation

The Grand Jury voted to follow up on the investigation conducted by the previous term's Grand Jury regarding DeKalb Chief Executive Officer (Chief Executive) Vernon Jones and his security detail. We were motivated to continue this investigation due to concerns about the structure of our government in DeKalb County and the potential for abuse of power by any Chief Executive due to a lack of checks and balances in the system, as discussed in the presentment of the previous term's Grand Jury. We were particularly keen to follow up with the DeKalb County Board of Commissioners as to whether any of the previous Grand Jury's recommendations would be implemented. We would like to stress that we felt that these issues are of paramount concern to the citizens of DeKalb County irrespective of the individuals in office now or in the future. We are aware that the current administration did not establish the current form of government. Many of the issues we addressed were predicted by the 1986 study by the Carl Vinson Institute of Government in 1986.

The investigation was hampered by the limited input and responsiveness of the District Attorney's office. The rapid pace of indictments and the initial lack of knowledge by the Grand Jurors of the investigative process slowed the investigation.

We came together as twenty-five individuals, but we act together as one group. While we appreciate the assistance and advice from the District Attorney and his

staff, we submit these findings and recommendations as an independent investigative body.

1. During the special investigation, the Grand Jury interviewed the following members of the DeKalb County Board of Commissioners:

District 1 – Elaine Boyer

District 2 – Gale Walldorff

District 3 – Larry Johnson

District 4 – Burrell Ellis

District 5 – Henry C. Johnson, Jr.

District 6 – Judy Yates

District 7 – Lou Walker

2. The Grand Jury also reviewed the following documents:

- a. *Handbook for Georgia Grand Jurors* (2001 edition)
- b. DeKalb County Grand Jury Presentments; July-August 2003 Term (Submitted September 11, 2003)
- c. Memo dated October 15, 2003 from DeKalb County Executive Assistant to DeKalb County Chief Executive Officer on "Observations on the Recommendations of Grand Jury Presentation" including "Comments on Grand Jury Presentation"
- d. *DeKalb County Organizational Act of 1981* (and various amendments)
- e. *A Study of the Legal Structure of the Office of Chief Executive Officer and the Board of Commissioners of DeKalb County, Georgia*; Governmental Research and Services Division; Carl Vinson Institute of Government; The University of Georgia; Athens, Georgia 30602 (1986)
- f. Order Granting Motion to Expunge Grand Jury Presentment (Filed September 10, 2003)
- g. Memo dated October 9, 2003 from David Fisher, Director Facilities Management to DeKalb County Board of Commissioners Budget Committee regarding Performance Contracting Initiative

II. FINDINGS AND RECOMMENDATIONS

A. Procedure and Time Commitment.

There is a lack of continuity between Grand Juries. We recommend that the Foreman, Assistant Foreman, or head of any investigative committee of the Grand Jury be given some time on the third meeting day of the next term (i.e. once the new Grand Jury is settled in) to review investigations conducted by the previous term's Grand Jury. We also recommend that members of investigative committees be available to subsequent grand juries for follow-up purposes. This would enable the next Grand Jury to proceed expeditiously with or to conclude the work of the previous term's committees. It would promote continuity. We were handicapped in this respect due to the fact that legal action was ongoing regarding investigative issues as our term started.

B. Investigative Grand Jury.

We recommend that in the future two separate Grand Juries be empanelled: the first to fulfill the Grand Jury's criminal function of reviewing indictments and the second, an Investigative Grand Jury, to fulfill the Grand Jury's civil functions and duties not limited to reviewing indictments. The term of the Investigative Grand Jury should be at least three months to allow for adequate follow-up and continuity. This Grand Jury could meet one day a week, or as needed, in order to reduce the disruption on jurors' lives. A Deputy District Attorney (DDA) should be assigned to this Grand Jury at least on a part time basis.

C. Role of the District Attorney's Office.

In order for the Grand Jury to be effective from the first day of service, we recommend that a special Assistant District Attorney (ADA) be assigned to the Grand Jury for its term. This ADA would be responsible for assisting the Grand Jurors in legal interpretation, conducting research, and helping focus investigations.

D. Day-to-Day Workings of the Grand Jury.

We recommend that a secure web site be developed so that Grand Jury members could communicate more easily with each other. (Web access is available to all DeKalb County residents free of charge at the library.) Also, we recommend that the last two years of presentments be made available to the Grand Jury. The best way to do this would be to have a link on the DeKalb District Attorney's web site.

We also recommend that there be an Addendum to the Handbook for Georgia Grand Jurors that specifies which duties apply to DeKalb County and which do not apply.

We recommend the personal information questionnaire for Grand Jury members have a check box to indicate whether they would like the information published to other Grand Jury members. (This was also stated in the previous May – June Grand Jury presentments.)

E. Citizens Review Board (as Expressed through an Investigative Grand Jury).

We concur with the July-August Grand Jury that an independent Citizens Review Board should be established to hear information from County employees and ordinary citizens regarding apparent or suspected government waste, fraud, or corruption. As noted in Paragraph B above, we recommend that the November-December Grand Jury explore the feasibility and desirability of creating a new "Investigative Grand Jury" to fulfill this function. This is already permissible under current law, and it would not involve setting up a new Citizens Review Board. The Investigative Grand Jury would protect the privacy of County employees and all other citizens reporting these concerns. It would be impaneled four times a year for a three-month term, and it would meet only once a week, or as needed.

1. Waste, Fraud, and Corruption: Checks and Balances

County employees already have procedures for appealing routine employee grievances or grievances relating to discrimination. Employees currently do not have a specific mechanism that would allow them to report observed or suspected instances of County waste, fraud, or corruption anonymously, without risk to their jobs, promotions, or future salaries. We believe the recent large expenditures for Chief Executive security and chauffeur services would have been reported quickly and brought to open discussion by just such a mechanism. More importantly, we believe that the problems in the Sheriff's Office, which culminated in the murder of the sheriff-elect would have been reported by employees at an early date.

To provide this mechanism, we recommend that the next Grand Jury authorize a dedicated telephone line, to be known as a "Support Line," that would be made available to all 7500 County employees to report significant instances of apparent waste, fraud, or corruption that they encounter in the course of their work. Its existence should be well publicized to all County departments, and the anonymity of callers should be demonstrably inviolate and assured. The line would be monitored as specified by the next regular Grand Jury, and an Investigative Grand Jury would explore complaints and take appropriate action.

F. Internal Controls (Including the Budget).

We concur with the July-August Grand Jury that internal controls are inadequate. Independent financial audits and management letters should continue and should be supplemented with rotating audits at the department level. In addition, the position of Internal Auditor should be filled. This will help maintain necessary financial checks and balances and will help in budget preparation and analysis. An annual line item budget is needed, by department, which includes actual expenditures in the prior year, as well as appropriated expenditures. If actual expenditures for the entire year are not available, they should be prepared for the past 4 quarters (including the last quarter of the year before the prior year).

It is our recommendation that the Board of Commissioners receive quarterly reports of budgets and expenditures to date from each department head and from the Chief Executive. This will allow the budget committee to review budget vari-

ances throughout the year. We also recommend that all contracts approved by the Chief Executive, and not previously submitted to the Board of Commissioners, be submitted to the Board of Commissioners each month.

1. Internal Controls and the Financial System: Checks and Balances.

The internal and external audits of any organization work hand in hand to assure that accounting and reporting practices are properly authorized, valid, complete, and accurate. This fact is recognized and provided for by the County Organizational Act, Section 10: DeKalb County is required by law to have a continuous annual general audit carried out by an outside auditing firm, and the Board of Commissioner's audit committee is permitted to screen, recommend, and hire an internal auditor. Currently the outside firm is KMPG Peat Marwick. DeKalb County has never received a qualified opinion or a disclaimer from any outside auditor, to our knowledge, and the County currently enjoys an AAA credit rating. In addition, DeKalb has received "excellence in financial reporting" awards from the GFOA for the past 24 years. Nevertheless, because the outside audit deals with a \$400 million budget, we suggest that perhaps they do not go deeply enough within individual departments to uncover how the system addresses and discloses exceptional expenditures. Recently, the Chief Executive's expenditures of approximately \$850,000 for security and chauffeuring services over a 2 1/2 year period were lost within the large budget of the Police Department. The security detail of the chief executive has now been considerably reduced. To maintain this improvement, and to avoid similar problems in the future, we therefore recommend that in addition to contracting for the outside general audits, the audit committee should request outside rotating "desk" and forensic audits of each department, or groups of departments, to help insure that the accounting system is designed to process and monitor department level data properly. The audit committee also should exercise their legal ability to employ a full-time internal auditor or auditors who would maintain year round surveillance of the County's financial management. The internal auditor(s) would report to the Board of Commissioners by law. These measures would address the concerns regarding departmental overtime and compensatory time that were expressed by the previous Grand Jury.

Additional concerns expressed regarding the budget were:

- 2. Budgeted Internal Auditor.** Department Budget Analysts and the Finance Director report to the Chief Executive, while the commissioners, who approve the budget, have no Budget Analysts and currently have no Internal Auditor (even though the Organization Act provides for an internal auditor reporting to the Board of Commissioners, and funds were set aside for an Internal Auditor in the current budget). We recommend that the Board of Commissioners forthwith hire an Internal Auditor, or auditors. This person or persons should have legal access to the records of the department Budget Analysts and the Finance Director. An alternative suggestion is that the Finance Director should also report to the Board of Commissioners.
- 3. Too Few Votes Required to Pass the Budget.** It takes only four members of the Board of Commissioners to pass a \$400 million budget prepared by

the Chief Executive. The current DeKalb County budget was passed with a 4-3 vote. In contrast, it requires five Commissioners to override the Chief Executive's veto of Commission resolutions and ordinances (except zoning ordinances), and seven (unanimous vote) to replace the County Attorney and Executive Assistant, who theoretically report to both branches of government. We recommend that the standard for budget approval be changed to require at least five assenting members of the Board of Commissioners.

G. Security Detail.

This Grand Jury interviewed all seven members of the DeKalb County Board of Commissioners regarding the previous Grand Jury's findings on the Chief Executive's security detail. We concur with the July-August Grand Jury that the current security detail "...be restructured completely. Responsibility for Chief Executive security and transportation should revert back to a non-police unit." We concur because we think that the department that supervises the Chief Executive's security detail should also budget for it.

The Commissioners provided us with a report that states that the Executive Branch of DeKalb County has reviewed the security detail being used by the Executive Branch and has reduced the number of the security staff to three. We recommend that in addition the security staffing be reviewed by a second source with regard to:

- (1) specific duties and responsibilities of the Chief Executive's security detail;
- (2) who will supervise the Chief Executive's security detail, and;
- (3) which department will budget for the Chief Executive's security detail.

H. Form of Government.

The DeKalb Form of Government is Unique in Georgia and Unusual in the Nation.

We concur with the July August Grand Jury that peculiarities in our County governmental organization have put an unusual amount of power in the position of the Chief Executive, contrary to the aims and intentions of the Organization Act of 1981. We are especially concerned that the checks and balances intended by the Organization Act are not working. For example:

1. The head of the Executive branch sets the agenda and chairs the meetings of the Legislative branch, which allows the Chief Executive to add, delete or change the order of items; to limit discussion of agenda items; and to reward or punish Commissioners by allowing or not allowing an item on an agenda. The 1986 Carl Vinson Institute study of the DeKalb County government (cited above) mentions this defect on page 40 under

a. Power to Preside:

"The DeKalb County reorganization plan aimed to separate executive and legislative functions that were joined in the old form of government. However, the reorganization act as passed provided that the CEO could choose to preside over meetings of the Board of Commissioners. This provision gave the CEO a legislative function akin to that of the chairman under the old form of government. Four of the commissioners interviewed criticized outright this provision. They pointed out that it violates the principle of separation of powers and precludes having a real system of checks and balances between the executive and legislative branches. Moreover, there is a sense among these four commissioners that, given the CEO's other powers under reorganization -- to veto, to set the agenda and budget, and to control staff resources -- the office of CEO has, through the provision to preside, gained inordinate influence in legislative matters at the expense of the Commission." (Study, 1986)

2. Because of the lack of separation of the Executive and Legislative Branches of the DeKalb County Government, we found that many of the Board of Commissioners members have adapted the attitude of "cooperation and collaboration" and the need to "go along to get along" in order to get anything done in County government. Given the ability of the CEO to set the agenda, chair the meetings, and veto legislation passed at those meetings, this attitude may be understandable. It can also provide a convenient excuse for either action or inaction. However, it was not the original intention of the Organization Act of 1981, nor does it best serve the citizenry, in our view.
3. We recommend that all necessary steps be taken to allow the Board of Commissioners to set their own agenda and chair their own meetings. We understand that this may require that the DeKalb Delegation to the General Assembly initiate and support changes to state law as it affects DeKalb County. THIS IS A CRUCIAL ELEMENT IN DEVELOPING THE NEEDED CHECKS AND BALANCES IN DeKALB COUNTY GOVERNMENT.
4. The County Attorney advises both the Legislative and Executive Branch, but reports to and is paid by the Executive branch. Since the county attorney works at the pleasure of the CEO, this leaves the Legislative Branch without independent legal advice whenever there are disagreements between the two branches. The recent ruling of the County Attorney advising the Board of Commissioners not to address this session of the Grand Jury, despite the desire of some Commissioners to do so, is a current example of this deficiency. The Board of Commissioners should be given adequate staff and legal assistance to perform their duties. Independent legal assistance to the Board of Commissioners is needed.
5. The Board of Commissioners should be provided adequate staff and legal assistance to perform their duties. This staff and legal assistance should be independent of the Executive Branch. Research assistance in the areas of land use, budget, and finance, is especially needed, as these are their primary responsi-

bilities. Staff assistance in these areas could be to the Board as a whole rather than to individual commissioners in order to avoid potential conflicts of interest. However, individual staff assistance of individual commissioners is also needed for items such as constituent services.

6. We concur with the findings of the last Grand Jury that the current governmental system lacks adequate checks and balances, which creates potential for abuses of power. As noted earlier, this is a structural problem and is not unique of the current administration.
7. In an urban county such as DeKalb, competent performance on the Board of Commissioners is a full time job, and should be treated and compensated as such. Each District Commissioners represents a population base equivalent to that of Macon or Augusta. Each Super District Commissioner represents a population base almost equivalent to that of some states. This level of responsibility demands more than part time attention.

8. Executive and Legislative Branches of the County: Checks and Balances

We believe the size of DeKalb County (population 685,000 and a budget of \$400 million) requires a strong Chief Executive, but that the County can only benefit from a much stronger and better-enabled board of County Commissioners. The board of Commissioners suffers from (a) an organizationally weak position, (b) low salaries and small administrative staffs and budgets.

a. Organizationally Weak Position of the Legislative branch

By law, the chief executive can choose to preside at all meetings of the Commission. (Section 11 of the Organizational Act: Presiding Officer.) The current chief executive also sets the agenda for Commission meetings. Commissioners speak frequently of needing to cooperate and collaborate with the executive branch in order to get anything done, but they alone appear to have the burden of building these relationships. The inability of Commissioners to chair their own meetings makes a mockery of the independence of the Commission, an elected body. It is contrary to the overall intent of the 1981 Organization Act (see above). This should be rectified by act of the General Assembly and submitted to the voters, as required by the Organizational Act (Section 23-1). We believe the chief executive's powers over the Commission would be entirely adequate, even without the authority to chair the Commission's meetings. The chief executive's powers include his or her ability to convene special meetings of the Commission and to compel members' attendance by subpoena. In contrast, the current powers of the County Commissioners are entirely inadequate. Commissioners' powers would be strengthened if they had the authority to set their own agendas in their regular meetings and to chair those meetings.

The Commission cannot hire or fire the financial director, the planning director, or the merit system director of the County, nor can they influence

the appointment, compensation, or removal of any other County employee except their own one-person staff. All County employees are hired, compensated, and removed by the chief executive. The strengths of the Commission, however, do include the abilities to pass zoning laws that cannot be vetoed by the chief executive and to review and authorize the County budget. The Commission can hire an internal auditor. The Commission also has the ability to override a chief executive's veto of any other Commission-passed ordinances and resolutions by a 2/3 vote, as well as the ability to discharge either the County executive assistant (COO), or the County Attorney, by a 2/3 vote. Again, the ability to set their own agendas and to chair their own regular meetings would help to the organizational strength of the Commission and to the County as a whole, in our opinion.

b. Relatively Small Salaries, Staffs, and Budgets of the Legislative Branch

The Commissioners are paid salaries of around \$20,000 a year in total, which is 30-35% lower than salaries paid to Commissioners of surrounding counties of a large size. By law, as we understand it, Commissioners approve their own compensation, and the electorate votes on this at the same time that they vote for or against the Commissioners. We recommend that responsibility for compensating the DeKalb County Commissioners be returned to the General Assembly, or that voter approval of Commissioners' compensation be decoupled from the election cycle, so that their salaries can more easily be brought into line with those of other Georgia counties. These measures would improve the working conditions and strengthen the authority of the Board of Commissioners within the County. Commissioners individually report spending between 20 and 40 (or more) hours each week on County business. Each Commissioner has one paid assistant and an operating budget of around \$100,000. The total BOC expenditures amount to less than one fifth of one percent of the county budget. A Commissioner may and usually does represent more than 130,000 people. In spite of these poor working conditions, most of the current Commissioners put in long hours and hard work to benefit the people of DeKalb County.

Increasing the authority, compensation and resources of the Board of Commissioners will have the additional benefit of both focusing their attention on the job at hand and reducing excuses for inaction or ineffectiveness.

I. Suggestions for follow up.

We recommend that the next Grand Jury follow up on our recommendations, just as we followed up on our predecessors recommendations. We recommend that they follow up how the current form of government compares with the that envisioned by the

original study committee. are willing to assist in providing guidance for additional candidates for interviews and documents for review.

In addition, a number of issues were not addressed due to time constraints, but are mentioned here in order that future Grand Juries consider them. These include:

1. **Administration of the County's Land Development Codes.** The County has a number of ordinances related to land development, ranging from the zoning ordinance to subdivision regulations to the tree protection ordinance and sign ordinance. These codes contain standards, with provisions and criteria to vary those standards for specific reasons related to hardship. A full accounting of all waivers and administrative variances is needed.
2. **County Contracting Procedures.** Since mid 1991, the Board of Commissioners has twice voted to increase the limits of the amounts the executive branch can spend without Board of Commissioners approval. It is unknown how many contracts have been let, for how much, for what services, and to whom they were let. It is not clear how Requests for Proposals are evaluated. A full description of how RFP's are received, evaluated and recommended to the Board of Commissioners is needed. Are outside audits ever performed to determine if the tasks called for in the RFP are carried out? Unsuccessful bidders are reluctant to ask such questions for fear of not being invited to bid on subsequent proposals.
3. **Property Assessment.** It appears that despite the County's status as an urban county with the densest population density in GA and one of the highest in the Southeast, the DeKalb tax digest is heavily weighted toward residential property. What are the trends in valuations of residential versus multifamily, industrial and commercial property by area? Initial research suggests that some area may be assessed more aggressively than others, and that residential property is assessed more often and more aggressively than commercial property. A description of what areas are selected for reassessment, how they are selected, how often they are reassessed and what criteria are used is needed.

III. CONCLUDING COMMENTS

- A. We were quite impressed with the caliber of the individuals who came before us as prosecutors, investigators, and law enforcement officers. In almost every case, they were clear in their knowledge of the law, intelligent and even-handed in its application, and careful in preparing and presenting their evidence. We are proud to have such fine people serving the citizens of DeKalb County. We especially appreciated those prosecutors who wrapped up their presentation by correlating the evidence presented with the counts in the indictment.
- B. However, we have some concerns that there may be a "piling on" of charges in some relatively minor cases, while multiple charges on some of the more

serious cases were not pursued. Some (but not a majority) of the grand jurors questioned why some seemingly minor crimes were treated as felonies, taking up time and money in the court and prison system, when there seem to be plenty of serious crimes to be addressed.

- C. This has been a large time commitment for the Jurors. While inconvenient, we believe that this commitment by average citizens is needed to assure good and fair government. Our recommendations should be carefully considered in the guise of governmental protection and enhancement rather than personal criticisms. Our county is probably the largest provider of government services in the South and one of the largest in the nation. We have historically been viewed as an efficient provider of government services. However, we do not want to maintain efficiency at the expense of fairness or openness. As the county grows in population and complexity, we need to be continually mindful of maintaining a transparent and responsive government.

ADDENDUM

This Grand Jury began its inquiry as a follow-up to the recommendations of the last Grand Jury. However, as we delved into things, we came to understand that these recommendations were related to DeKalb's peculiar form of government, which has been controversial from its beginning in the early 1980's. The problems described in this presentment were predicted in a 1986 University of Georgia report, published, seventeen years and three administrations earlier.

We understand that the legislation establishing the current form of government differed from the recommendations of a study committee charged with developing a county government with clear separation of powers and a system of checks and balances in 1981. We also learned that there was a citizen's effort to amend the form of government in the 1990's, but failed due to lack of interest by the DeKalb delegation in the General Assembly (Source: Jacqueline Byers, NAOC and others)

These problems have existed from the first, but needed a particularly forceful chief executive for them to become apparent. Nevertheless, we believe they are damaging the government by weakening the powers of the commission, which was never intended by the 1981 Organization Act. In fact, the opposite was the intention.

The following quotes describe the current situation:

"DeKalb County has a mixture of two forms of government. It combines the offices of the Chief Executive and the Chief Administrative officers. I don't know of any other county in the nation where the elected chief executive presides over meetings of the Board of Commissioners" (Source: Jacqueline J. Byers, Esq.; Director of Research, National Association of Counties, October 28, 2003)

Quotes from the 1986 UGA Study (by then current commissioners):

"The way the reorganization act was written, a bad CEO – an immoral person --could really take over and hide his or her actions". (page 38)

"It is OK for the CEO to nominate and the Commission to confirm people he deals with as administrator, but citizen boards, for example MARTA , are policy boards" (page 39)

"If he wants to preside, he shouldn't have a veto" (page 41)

"Because the CEO sets the agenda and chairs the meetings, his thinking influences the Board members and there is no separation of powers". (page 41)

"The CEO should not chair Commission meetings; In Atlanta the mayor can't speak before the Council without being invited" (page 41)

The commission needs staff.. in the past there was joint use of staff....the staff doesn't feel free to do something without clearing it with the CEO." (p42)

"The Board doesn't have any staff, and checks and balances don't work if informatino comes only from the executive" (page 42)

---END---